

1 THE HONORABLE MARSHA J. PECHMAN
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7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 9 HARLEY MARINE SERVICES, INC.,
11 et al.,

12 v.
13 Plaintiffs,

14 FATHOM MARINE, INC., et al.,

Defendants.

IN ADMIRALTY

NO. 2:17-cv-00856-MJP

AMENDED STIPULATION AND
PROPOSED ORDER

15 **AMENDED STIPULATION**

16 The parties respectfully submit this *Amended Stipulation and Proposed Order to Amend*
17 *the Trial Schedule*, in response to the Court's denial (Dkt. 41) of the original *Stipulation* of June
18 18, 2018 (Dkt. 40). By mediating the underlying dispute on July 13, the parties are attempting to
19 fulfill the requirements of Fed.R.Civ.P. 1: resolving this case in a "just, speedy, and inexpensive"
20 manner.

21 As in their original Stipulation, the parties seek to shift only three dates: (1) the deadline
22 for the disclosure of expert witness reports; (2) the close of discovery; and (3) the deadline for any
23 motions pertaining to discovery. Moreover, the parties are seeking to move the discovery and
24 disclosure dates by only (approximately) one month. These dates are internal scheduling
25 deadlines impacting the parties that will not disturb or involve the Court. The parties do not
26 anticipate filing discovery motions, nor do they anticipate requiring Court involvement in the

1 disclosure of expert witness reports. The trial date, and all related pre-trial deadlines, remain
2 undisturbed.

3 The parties believe this minimal, one-month extension of disclosure deadlines is
4 appropriate in order to facilitate the planned July 13 mediation. The parties believe the scheduled
5 mediation provides the last, best opportunity to resolve this case short of trial. Mediation thus
6 represents the best chance of a “just, speedy, and inexpensive” resolution. Fed.R.Civ.P. 1.

7 The Court admonished the parties that “[m]ediation is not required and can take place at
8 any time.” *Dkt. 41*. What the Court did not know, because the parties neglected to mention it, is
9 that the planned July 13 mediation cannot take place at any time, because it will not merely
10 involve plaintiffs and defendants. Rather, the mediation will involve plaintiffs, defendants, and
11 two international, non-party insurance interests from The Shipowner’s Club—a London-based
12 insurer who provided both P&I and pollution coverage for plaintiffs and defendants. In addition
13 to this, negotiations are ongoing with Royal Sun Alliance, plaintiffs and defendants’ Vancouver,
14 British Columbia-based hull insurer. Payments from these insurance interests may resolve all, or
15 (at a minimum) a substantial part, of the underlying dispute. Coordinating settlement efforts with
16 these international insurers has proven quite difficult. July 13 is the only date that worked for all
17 parties necessary for the mediation. Thus, mediation cannot take place at any time, and the only
18 time that the parties can reasonably engage in such efforts is July 13.

19 Involving these international insurance interests has not only proven difficult but also has
20 required the parties to direct efforts towards letter-writing campaigns, coverage analysis, and
21 policy interpretation. This has necessarily interfered with the parties’ ability to retain experts
22 while concurrently raising the issue of whether or not such expert witnesses will be necessary.
23 Again, the parties are seeking to focus their efforts on what is most likely to resolve this multi-
24 party litigation in a “just, speedy, and inexpensive” manner. Fed.R.Civ.P. 1. With the insurance
25 interests now fully engaged, the parties believe that spending tens of thousands of dollars on
26 retaining and disclosing experts, who may be wholly unnecessary, is neither just nor inexpensive.

1 Even if mediation on July 13 does not result in a settlement of all pending claims, it could
2 result in a partial settlement of discrete claims. If that occurs, the scope of the potential expert
3 opinions needed may dramatically decrease. The efficiencies realized by such a decrease are
4 further justification for a brief delay in the disclosure until after mediation.

5 The parties have not simply disregarded the Court's case schedule. Some experts and
6 their reports have already been retained and disclosed. *See, e.g., Reports of Captain Emmel, Dkts.*
7 32; 32-1-32-6. Additionally, four depositions of the parties' corporate officers, three of which
8 lasted over 7 hours, have already taken place. Over 20,000 pages of documents have been
9 exchanged in discovery. A motion for partial summary judgment has been fully briefed and
10 submitted. The parties have not neglected the current case schedule. They are simply requesting
11 one month of additional time to retain and disclose additional expert opinions and conduct
12 discovery related thereto.

13 Finally, though the Court is correct in indicating that mediation is not required, ADR is
14 "encourage[d] and promote[d]" by the Court's local rules and federal statute. LCR 39.1(a)(1); 28
15 U.S.C. § 651, *et seq.* As mentioned, mediation represents the last, best hope for the parties to
16 resolve this matter without a full trial. It will involve the coordination of multiple, international
17 insurance interests. Preparation for mediation will also involve complex insurance issues not
18 directly relevant to the issues presented in this lawsuit. Additional time the parties can spend
19 preparing for mediation—rather than focusing on coordinating potentially unnecessary expert
20 opinions—will prove crucial in reaching the parties' mutual goal of a partial or global resolution
21 of the pending claims in a just and inexpensive manner. Fed.R.Civ.P. 1.

22 The parties believe the foregoing demonstrates the "good cause" necessary for this
23 minimal extension of disclosure deadlines. LCR 16(b)(5).

24 The Court has asked for a "plan for meeting the revised deadlines." *Dkt. 41.* The plan is
25 simple. The parties will disclose experts for their cases-in-chief no later than July 20, 2018.
26 Numerous experts have already been contacted, and, as mentioned above, some reports have

1 already been exchanged. July 20 will be the hard deadline for such expert disclosures and the
2 parties do not plan to request any further extension. Because rebuttal experts could be disclosed
3 as late as August 19 (Fed.R.Civ.P. 26(b)(2)(D)(ii)), the parties would need a short amount of
4 additional time to depose any such experts, justifying moving the discovery cutoff date from
5 August 17 to September 21. The discovery motion deadline is simply extended to match these
6 deadlines—from July 18 to September 21.

7 Accordingly, the parties respectfully request that the Court reconsider the stipulated
8 motion to amend the deadlines for disclosure of expert witness reports, the completion of
9 discovery, and the deadline for bringing any discovery motions as follows:

10	EVENT	CURRENT DATE	PROPOSED DATE
11	Bench Trial	January 14, 2019	No change
12			
13	Deadline to Join Additional	September 14, 2017	No change
14	Parties		
15			
16	Deadline for amending	March 12, 2018	No change
17	pleadings		
18			
19	Report from expert witness	June 18, 2018	Friday, July 20, 2018
20	under FRCP 26(a)(2)		
21	due		
22			
23	All motions related to	July 18, 2018	Friday, September 21,
24	discovery must be filed and		2018
25	noted on the motion		
26	calendared no later than the		

1	third Friday thereafter (See LCR 7(d))		
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4	Discovery completed	August 17, 2018	Friday, September 21, 2018
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7	All dispositive motions must be filed and noted on the motion calendar no later than the fourth Friday thereafter (see LCR 7(d))	September 17, 2018	No change
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13	All motions in limine must be filed by and note on the motion calendar no later than the Friday before the Pretrial Conference. (See LCR 7(d)(4))	December 10, 2018	No change
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20	Agreed pretrial order due	January 2, 2019	No change
21			
22	Trial briefs and proposed findings of fact and conclusions of law, and designations of deposition	January 2, 2019	No change
23			
24			
25			
26			

1	testimony pursuant to CR	
2	32(e)	
3		
4	Pretrial conference to be held	January 7, 2019 at 1:30 P.M.
5		No change

6 DATED this Thursday, June 21, 2018.

7 BAUER MOYNIHAN & JOHNSON LLP

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10 s/Mark Krisher

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23 DATED this Thursday, June 21, 2018.

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ORDER

The Court having reviewed the parties' stipulation, the Court finds good cause to amend the current trial schedule, and hereby amends its previous *Order* (Dkt. 12) as follows:

4	EVENT	CURRENT DATE	PROPOSED DATE
5	Bench Trial	January 14, 2019	No change
6			
7	Deadline to Join Additional	September 14, 2017	No change
8	Parties		
9			
10	Deadline for amending	March 12, 2018	No change
11	pleadings		
12			
13			
14	Report from expert witness	June 18, 2018	Friday, July 20, 2018
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18	All motions related to	July 18, 2018	Friday, September 21,
19	discovery must be filed and		2018
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22	third Friday thereafter (See		
23	LCR 7(d))		
24			
25	Discovery completed	August 17, 2018	Friday, September 21,
26			2018

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3	All dispositive motions must be filed and noted on the motion calendar no later than the fourth Friday thereafter (see LCR 7(d))	September 17, 2018	No change
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11			
12			
13			
14			
15			
16	Agreed pretrial order due	January 2, 2019	No change
17			
18	Trial briefs and proposed findings of fact and conclusions of law, and designations of deposition testimony pursuant to CR 32(e)	January 2, 2019	No change
19			
20			
21			
22			
23			
24			
25	Pretrial conference to be held	January 7, 2019 at 1:30 P.M.	No change
26			

AMENDED STIPULATION AND ORDER - 8
Case. No. 2:17-cv-00856-MJP

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2 Dated this 21st of June, 2018.

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The Honorable Marsha J. Pechman
United States Senior District Court Judge

CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the State of Washington that on June 21, 2018, I
3 served the preceding document to the below addressees via the Court's ECF system and by the
additional methods indicated below:

4

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